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## LOCAL DEVELOPMENT PLAN: EXAMINATION REPORT

Report by Director – Infrastructure & Environment

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### SCOTTISH BORDERS COUNCIL

28 September 2023

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#### 1 PURPOSE AND SUMMARY

- 1.1 **This report presents the modifications arising from the Examination Report on the Scottish Borders Proposed Local Development Plan (the Plan) and seeks Council agreement to the proposed modifications, and to take forward the Plan as amended to formal adoption.**
- 1.2 The Council has received the Examination Report on the Proposed Local Development Plan (the Plan). The Examination Report proposes a number of modifications to the Plan and the full Report is available to view at [www.scotborders.gov.uk/ldp2](http://www.scotborders.gov.uk/ldp2). A summary table setting out all the modifications contained within the Examination Report is attached as **Appendix A**.
- 1.3 For ease of reference, an indexation table has been produced for each chapter, policy and settlement, indicating where the Reporters' conclusions and recommendations can be viewed within the Examination Report. This is attached as **Appendix B**.
- 1.4 Officers are content with the conclusions and recommendations contained within the Examination Report. The Council is therefore recommended to agree the Reporters modifications in full, and to proceed towards formal adoption of the Plan.
- 1.5 It should be noted that further to the appendices attached, there are a number of background documents. The full [Examination Report](#), updated Environmental Report and updated Habitats Regulations Assessment can all be viewed at [www.scotborders.gov.uk/ldp2](http://www.scotborders.gov.uk/ldp2). The updated Integrated Impact Assessment can be viewed here: <https://www.scotborders.gov.uk/LDP2023>

## **2 RECOMMENDATIONS**

### **2.1 I recommend that the Council:-**

- (a) Agree the modifications made to the Proposed Local Development Plan (Appendix A), any subsequent consequential changes and minor typo/drafting changes; and**
- (b) Agree to take forward the Local Development Plan (Appendix C), as amended by the agreed modifications, to formal adoption; and**
- (c) Agree to adopt the Local Development Plan, unless directions by Scottish Ministers result in significant changes to the Plan; and**
- (d) Note the updates to the Environmental Report, Habitats Regulations Assessment and Integrated Impact Assessment.**

### **3 BACKGROUND**

- 3.1 The Proposed Local Development Plan (LDP) has been prepared under the Town and Country Planning (Scotland) Act 1997, as amended by the Planning etc. (Scotland) Act 2006. However, as a result of the Scottish Government's reform to the planning system, the Planning (Scotland) Act 2019 sets out a number of changes to the planning system and the production of new style Local Development Plans. The Scottish Government confirmed that a transitional provision allows for Proposed LDPs published before June 2022 (which was the case for Scottish Borders) to proceed to adoption under the former Act and regulations.
- 3.2 The Proposed LDP was drafted and subject to consultation towards the end of 2020. Whilst Officers were aware of the forthcoming planning reform, the anticipated adoption date for National Planning Framework (NPF) 4 was unknown at that time. The Development Plan for the Scottish Borders now consists of NPF4 and the adopted Local Development Plan (LDP) 2016. NPF4 was adopted on 13 February 2023.
- 3.3 The Council's LDP has been subject to formal Examination. This report considers the modifications proposed by the Examination Report, and proposes that they should be accepted and included in the updated LDP to be submitted to Scottish Ministers, as part of the formal adoption process.
- 3.4 A Main Issues Report (MIR) was prepared in advance of the Proposed LDP, identifying the key issues that the LDP should address, and was subject to public consultation. The Council, following its meeting on 30 August 2018, agreed the MIR as a basis for public consultation for a period of 12 weeks, this took place from 8 November 2018 and 31 January 2019. The Environmental Report (ER) was also subject to public consultation under separate legislative process.
- 3.5 As part of the MIR consultation there were a series of 10 drop-in exhibitions and 7 workshops held across the Scottish Borders, attended by 250 people. 330 representations were received during the MIR consultation period, from a range of interested parties covering a wide range of subjects. The ER received responses from the three consultation Authorities (Historic Environment Scotland, Scottish Environment Protection Agency and NatureScot). The Council, at its meeting on 26 June 2019, considered a report in relation to the consultation responses on the MIR and ER.
- 3.6 Just as the Proposed Local Development was about to be presented to Council, the COVID-19 pandemic struck. This resulted in some necessary changes to public participation in the process. Where possible, correspondence, communication and publicity (including public inspection of the Proposed Plan and any of its associated documents) were by electronic means, including the promotion of the process via a short film on the Council's website. The period for making representations and objections to the Proposed LDP ran for 12 weeks. This was 6 weeks longer than the statutory minimum.
- 3.7 At its meeting on 25 September 2020, the Council agreed the content of the Proposed LDP, including the responses to matters raised from the

consultation on the MIR. The Plan was subject to public consultation from 2 November 2020 to 25 January 2021. 1043 separate representations were submitted to the Proposed LDP consultation. It should be noted that a representation made reference to either a single point, or multiple issues.

- 3.8 Inevitably, the pandemic also had the effect of delaying the adoption process, one consequence of which was that the regulatory and policy environment for adoption changed in the intervening period, including the development and adoption of the National Planning Framework. However, recognising the considerable work that had gone into the development of the new plan, together with a recognition that the developing policies were still broadly consistent with this new policy context, the Council elected to see the current plan to its conclusion.
- 3.9 Following a period for representations and consideration of those representations, at its meeting on 10 March 2022, Council agreed to take all representations received to formal Examination. The Plan was submitted for Examination on 14 July 2022 and reviewed all unresolved representations made on the Scottish Borders Proposed LDP. The Examination formally started on 26 September 2022. Over the period of the Examination, the Reporter issued 23 further information requests, and held a one day hearing on the issue of housing.
- 3.10 The Reporters have now completed their Examination of the Plan, against the representations and the Council's submissions (as agreed at the Council meeting on 10 March 2022) and have outlined the modifications to be made to the Proposed Plan. The Examination Report was published by the Directorate for Planning and Environmental Appeals on 5 July 2023. **Appendix A** sets out in detail all the modifications proposed.

## 4 EXAMINATION REPORT

- 4.1 The Examination Report spans over 1,100 pages and can be viewed at the following link [www.scotborders.gov.uk/ldp2](http://www.scotborders.gov.uk/ldp2). **Appendix A** sets out a summary of the Reporters' proposed modifications.
- 4.2 The Reporters considered 76 separate issues, and determined that there were no necessary modifications on 42 of these issues. The following paragraphs set out the main modifications recommended by the Reporter.

### Strategic Development Plan references

- 4.3 There are a number of modifications throughout the Plan, to reflect the fact that the Proposed LDP was prepared during an era of the Strategic Development Plan's (SDPs) in Scotland. However, SDPs no longer form part of the Development Plan and consequently the requirement for the LDP to comply with the Strategic Development Plan no longer applies. Modifications have been made, to reflect the fact that from February 2023, NPF4 now forms part of the Development Plan.
- 4.4 It should be noted that the Reporter has only considered those policies that were subject to Examination. Therefore there remain some references throughout the remainder of the Plan to NPF3, Scottish Planning Policy

(SPP) and the former Strategic Development Plan (SDP). Owing to the requirement of the Regulations, the Council cannot unilaterally make those changes and we will need to await the views of Scottish Ministers in terms of those inconsistencies.

### **Local Housing Land Requirement modifications**

4.5 The Reporter has largely agreed with the Council's position and arguments set out as part of the housing hearing held on 26 April 2023, which is welcomed. The Local Housing Land Requirement (LHLR) has been modified to 4,800 units (480 units per annum) over a ten year period. The Reporter ultimately concluded that there is sufficient housing land planned for, to meet the LHLR for the Plan period. There are 9,272 units contributing to the requirement within the Scottish Borders, which results in a surplus of 4,472 units when compared against the LHLR.

### **Policy modifications**

4.6 There are a number of modifications to policies contained within the Plan. The key modifications are outlined below;

- Modifications to a number of policies including;
  - PMD1: Sustainability
  - PMD2: Quality Standards
  - ED1: Protection of Business and Industrial Land
  - ED3: Town Centres and Shopping Centres
  - ED4: Core Activity Areas in Town Centres
  - ED5: Regeneration
  - ED7: Business, Tourism and Leisure Development in the Countryside
  - ED8: Caravan and Camping Sites
  - ED10: Protection of Prime Quality Agricultural Land and Carbon Rich Soils
  - ED11: Safeguarding of Mineral Deposits
  - HD1: Affordable Housing Delivery
  - HD6: Housing for Particular Needs
  - EP1: International Nature Conservation Sites and Protected Species
  - EP2: National Nature Conservation Sites and Protected Species
  - EP4: National Scenic Area
  - EP5: Special Landscape Areas
  - EP6: Countryside Around Towns
  - EP7: Listed Buildings
  - EP8: Historic Environment Assets and Scheduled Monuments
  - EP14: Coastline
  - EP16: Air Quality
  - EP17: Non Commercial and Community Growing Spaces
  - IS2: Developer Contributions
  - IS4: Transport Development and Infrastructure
  - IS8: Flooding
  - IS9: Waste Water Treatment Standards and Sustainable Urban Drainage
  - IS10: Waste Management Facilities

- It should be noted that the vast majority of the above modifications are minor and align the policies with NPF4.
- Development Adjoining Development Boundaries (PMD4): Deletion of criteria (c), relating to monitoring the effective five year housing land supply.
- Renewable Energy Developments (ED9): Modification to the policy and its supporting text to align with NPF4. The Reporter concluded that in the interest of consistency and to reflect national commitments to address the climate and nature crisis, Policy ED9 has been modified to indicate that development proposals for all forms of renewable, low-carbon and zero emissions technologies will be assessed in accordance with Policy NPF4 11. The Reporter also concludes that the existing Supplementary Guidance and studies may still provide useful tools in helping to identify landscape characteristics and sensitivities, albeit in a different policy context. Therefore, reference to these has been included within the introductory text before the policy itself.
- Mineral Extraction (ED12): Removal of Figure ED12a, in respect of the Areas of Search for Minerals. Policy text updated to align with NPF4.

## **Site modifications**

4.7 Six housing allocations have been removed from the Plan;

- Darnick, ADARN005
- Galashiels, EGL43
- Galashiels, AGALA029
- Oxton, AOXT0010
- Clovenfords, EC2
- Yarrowford, EY5B

4.8 In addition to the above, the following site modifications were made;

- Darnick, GSDARN002 (Key Greenspace): Additional key greenspace included within the Plan, covering Darnick Community Woodland area.
- Earlston, zEL57 (Business and Industrial Safeguarded allocation): Amendment to the boundary.
- Galashiels, EGL16B (Housing allocation): Amendment to the boundary to remove an area of garden ground.
- Galashiels, EGL200 (Housing allocation): Amendment to the boundary.
- Minto, SBMIN001 (Development Boundary): Amendment to the development boundary, to include garden ground of Dean Cottage at the southwest end of the village.
- Reston, SREST001 (Potential longer term housing allocation): Reduction in allocation site to reflect the recent construction of Reston Station.
- Reston, zRS3 (Reston Station): Removal of site from the Plan, to reflect the recent construction on site.
- Reston, BR5 (Housing allocation): Amendment to the boundary of the site BR5 to remove the areas of land occupied by a private house and a motor workshop.

## **Other modifications**

- 4.9 A number of other minor modifications are proposed throughout the remainder of the Plan. These include the following;
- Minor amendments to align with the terminology contained within NPF4.
  - Updating/replacement of text within the introductory chapters to reflect the current position regarding the climate change emergency and reference to the climate change route map (CCRM).
  - Chapter 8 updated to align with current legislation and National Policy, in respect of sustainability and climate change.
  - References updated throughout the Plan to reflect current terminology as a result of the United Kingdom leaving the European Union, including 'European Sites' and 'Habitats Regulations'.
  - Minor updates to site requirements, including a number that were updated to reflect requirements from SEPA.

## **Consequential changes**

- 4.10 As well as the modifications set out within the Report of Examination, a number of subsequent consequential changes have been made to the Plan. These are directly related to the modifications set out by the Reporters. The consequential changes include modifications to the following settlement maps to reflect the matters listed above; Clovenfords, Darnick, Earlston, Galashiels, Hawick, Minto, Oxtou, Peebles, Reston, St Boswells, Tweedbank and Yarrowford.
- 4.11 Consequential modifications were also made to the following maps;
- Countryside Around Town Map (Figure EP6a)
  - Policy Maps – additional annotation to refer to Technical Notes for Local Biodiversity Sites and Local Geodiversity Sites
  - Figure EP8a – updated to advise that the map can be viewed electronically
- 4.12 A number of minor typography errors/drafting changes/factual or mapping errors/terminology corrections have been picked up alongside the Reporters' modifications. It should be noted that these are very minor in nature and do not alter the overall principles or content of the Plan.

## **Legal Context**

- 4.13 It is important to recognise that the recommended modifications contained within Examination Reports are largely binding on planning authorities. In addition, Planning authorities do have the ability, in terms of the 1997 Act, but only to make such (minor) modifications to the LDP, as appear to them to be required for it to properly reflect the Report and its modifications.
- 4.14 Planning authorities may only depart from the recommendations in specific defined circumstances. These are set out in sections 19(10) and 19(11) of the 1997 Act and Regulation 2 of the Town and Country Planning (Grounds for declining to follow recommendation) (Scotland) Regulations 2009. The

only circumstance where authorities may depart from a recommendation is where that recommendation:

- (a) Would have the effect of making the LDP inconsistent with the National Planning Framework, or with any Strategic Development Plan or national park plan for the same area;
- (b) Is incompatible with Part IVA of the Conservation (Natural Habitats etc) Regulations 1994;
- (c) Would not be acceptable having regard to an environmental assessment carried out by the planning authority on the plan;
- (d) Is based on conclusions that could not reasonably have been reached based on the evidence considered at the Examination.

4.15 It should be noted that point (d) makes reference to the possibility of factual and clear errors made by the Reporters. Scottish Government guidance (Circular 6/2013 Development Planning, paragraph 94) makes it clear that this does not relate to circumstances where the planning authority disagrees with the planning judgement reached by the Reporter. An assessment of the modifications against the criteria has been made and it is considered that there are no grounds to decline to follow the Reporters' recommendations.

4.16 Subject to the exceptions set out above, section 19(10) of the Act requires Authorities to make the modifications recommended in the Examination Report, and any other requisite modifications. The intention is that these other, requisite modifications, should be wholly consequential on the reporter's recommendations (e.g. to rectify any factual or terminological inconsistencies created by the reporter's recommended modifications, or any necessary adjustments to tables, maps, schedules and text which are solely required to ensure that the whole of the plan properly reflects the terms of the modification which has been recommended). The planning authority should not make any unconnected modifications.

4.17 In these circumstances, it is therefore the view of Officers that the Council accept the recommendations set out within the Examination Report.

### **Next Steps to Adoption of the Scottish Borders LDP**

4.18 In order to formally adopt the Plan, the Council are required to publish the modifications and the revised LDP by;

- Placing a public notice
- Making the copies of the modifications and revised LDP available for public inspection at the planning office, in all public libraries and on the internet
- Notify all who made representation on the Proposed Plan.

4.19 The Council are to send to Scottish Ministers;

- Modifications made
- A statement on and explanation of any recommended modifications not made
- Proposed Plan for adoption



- Report of Examination
  - Advertisement of its intention to adopt
  - An environmental assessment on the Proposed Plan as modified
- 4.20 28 days following submission, the Council may adopt the Plan unless otherwise directed by Scottish Ministers. Scottish Ministers have a default power under the Act (section 20) to direct the planning authority to consider modifying a LDP, or for Scottish Ministers to approve the plan themselves. Subsequent to adoption there is a 6 week period in which a legal challenge can be made to the Plan.
- 4.21 Once the LDP is adopted, the Council will be required to;
- Send two copies to Scottish Ministers
  - Publish the LDP, including electronically
  - Place copies in public libraries
  - Notify people who made representations on the Proposed Plan of its publication and availability in public libraries
  - Advertise its publication in a local newspaper.
- 4.22 There is also a requirement to produce an Action Programme within three months of the Plan being adopted. This document will be aimed specifically at the delivery of the proposals and policies contained within the Scottish Borders LDP. The Action Programme will include timescales for the delivery of key infrastructure and will be reviewed regularly, taking into account changing circumstances. A post adoption Strategic Environmental Assessment is also required to be produced within three months of the Plan being adopted.
- 4.23 Having considered the Reporters' modifications, the Environment Report and Habitats Regulations Appraisal have both been updated to reflect the modifications. Both updated documents can be viewed at [www.scotborders.gov.uk/ldp2](http://www.scotborders.gov.uk/ldp2).

## **5 IMPLICATIONS**

### **5.1 Financial**

There will be costs associated with the preparation and printing of the Plan, advertisement and letters as part of the process of adoption, and thereafter once the LDP has been adopted. There is identified budget in place to cover this.

### **5.2 Risk and Mitigations**

The report in paragraphs 4.13 to 4.17 sets out the legal context for consideration by Council. There is significant risk of legal challenge and consequent delay to the Plan if the Council declines to accept the Report recommendations.

As detailed above, planning authorities are required to accept the Reporter's recommendations unless they consider the recommendations can be declined under any of the grounds of the Town and Country Planning

(Grounds for Declining to Follow Recommendations) (Scotland) Regulations (2009).

There are a number of risks associated with not accepting the recommendations set out within the Examination Report. Firstly, there would be a significant risk of legal challenge, for example from the house building or renewable industry (depending on the area of departure). This, in turn, would not only result in uncertainty, but equally significantly, a delay to the Plan, until any legal challenge is resolved. On the latter point, in the event that the Plan is unable to be relied upon due to a legal challenge then, the current Local Plan would have to continue to be used in the interim, and given that it is now 7 years old and is not aligned with NPF4, this would allow Reporters at appeal to potentially give it less weight.

### **5.3 Integrated Impact Assessment**

An initial Integrated Impact Assessment (IIA) was undertaken for the Proposed Plan in 2020. The IIA has been updated following the Examination Report and can be viewed here: <https://www.scotborders.gov.uk/LDP2023>

### **5.4 Sustainable Development Goals**

The Plan has been assessed against the UN Sustainable Development Goals checklist. It is considered that the allocations and policies contained within the Plan will contribute to the ambitions of the majority of the sustainability goals, including goals; 1, 2, 3, 6, 7, 8, 9, 11, 12, 13, 14, 15 and 17. The Plan itself contains reference to the sustainable goals and that the Council is committed to embedding these within strategies, policies and service delivery. It is considered that the Plan plays a key role in supporting the delivery of Scotland's national outcomes and the United Nations Sustainable Development Goals.

### **5.5 Climate Change**

The Plan has been assessed against the criteria within the checklist on climate change. It is considered that for all six impacts, the Plan will provide opportunities to either mitigate and/or enhance the activities in respect of climate change. The policies contained within the Plan will assist in mitigating/enhancing each of the activities, in line with the Council's Climate Change Route Maps and National policy drivers.

### **5.6 Rural Proofing**

Not required, as this is not a new, updated or amended policy or strategy. This report relates to a procedural decision at the end of the Development Plan process and other matters have been considered earlier in that process.

### **5.7 Data Protection Impact Statement**

There are no personal data implications arising from the proposals contained in this report.

## 5.8 Changes to Scheme of Administration or Scheme of Delegation

There are no changes to the Scheme of Administration or the Scheme of Delegation as a result of the proposals within this report.

## 6 CONSULTATION

- 6.1 The Director (Finance & Procurement), the Director (Corporate Governance), the Chief Officer Audit and Risk, the Director (People Performance & Change), the Clerk to the Council and Corporate Communications are being consulted and any comments will be incorporated into the final report.
- 6.2 The Chief Planning and Housing Officer, Director (Infrastructure & Environment), Director (Resilient Communities) are also being consulted.

### Approved by

Name	Title
John Curry	Director – Infrastructure & Environment

### Author(s)

Name	Designation and Contact Number
Deborah Armstrong	Lead Officer (Planning Policy & GIS)

### Background Papers:

Examination Report – available to view at [www.scotborders.gov.uk/ldp2](http://www.scotborders.gov.uk/ldp2) and a copy has been circulated to all Members

Updated Environment Report – available to view at [www.scotborders.gov.uk/ldp2](http://www.scotborders.gov.uk/ldp2)

Updated Habitats Regulations Appraisal – available to view at [www.scotborders.gov.uk/ldp2](http://www.scotborders.gov.uk/ldp2)

Integrated Impact Assessment – can be viewed at <https://www.scotborders.gov.uk/LDP2023>

### Previous Minute Reference:

Scottish Borders Council meetings - 30 August 2018; 26 June 2019; 25 September 2020 and 10 March 2022

**Note** – You can get this document on tape, in Braille, large print and various computer formats by contacting the address below. Deborah Armstrong can also give information on other language translations as well as providing additional copies.

Contact us at Deborah Armstrong, [deborah.armstrong@scotborders.gov.uk](mailto:deborah.armstrong@scotborders.gov.uk)

